U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of POLINA M. HASH and U.S. POSTAL SERVICE,
POST OFFICE, Charlotte, NC

Docket No. 98-2414; Submitted on the Record;
Issued April 6, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury on December 18, 1995 in the performance of duty.

On February 23, 1996 appellant, then a 51-year-old rural letter carrier, filed a traumatic injury claim alleging that on December 18, 1995 she injured her back "lifting trays of mail."[1] By decision dated June 7, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not establish fact of injury. The Office found that there was conflicting evidence regarding whether the incident occurred at the time, place and in the manner alleged.

By letter dated June 19, 1996, appellant, through her representative, requested a hearing before an Office hearing representative. In a decision dated September 9, 1997, the hearing representative affirmed the Office's June 7, 1996 decision. By letter dated October 14, 1997, appellant requested reconsideration of her claim, which the Office denied in a nonmerit decision dated November 26, 1997. By letter dated February 12, 1998, appellant again requested reconsideration and submitted additional evidence. In a decision dated May 6, 1998, the Office denied modification of its prior merit decision.

The Board has duly reviewed the case record on appeal and finds that appellant failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim including the fact that the

[1] The claim form indicates the date of injury as December 18, 1996; however, this appears to be a typographical error.

[2] 5 U.S.C. §§ 8101-193.

individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[5] An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[6] An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[7] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statements in determining whether a *prima facie* case has been established.[8] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative force and will stand unless refuted by strong or persuasive evidence.[9]

The Office found that appellant had not established that the employment incident occurred as alleged. In this case, there are inconsistencies in the evidence that cast doubt regarding the occurrence of the injury. Appellant did not file a claim or seek medical attention until approximately two months after the incident. Further, statements from coworkers conflict with appellant's description of the circumstances surrounding the alleged injury. In a statement dated March 16, 1996, appellant's supervisor, Sam Allred, indicated that appellant informed him that she injured her back in December 1995 moving mail from her work vehicle. In a statement dated February 29, 1996, a coworker, Dan Caldwell, related that appellant told him that she had hurt her back "getting mail out of the back seat of her car." In a statement dated March 25, 1996, the postmaster, Tonda S. Gregory, stated that appellant called her in the beginning of

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendelton*, 40 ECAB 1143 (1989).

[4] *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] *See Elaine Pendelton*, 40 ECAB 1142 (1989).

[6] *Charles B. Ward*, 38 ECAB 667 (1989).

[7] *Tia L. Love*, 40 ECAB 586 (1989).

[8] *Merton J. Sills*, 39 ECAB 572 (1988).

[9] *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

February 1996 and told her that in December she had "twisted and turned at the carrier case and did something to her back." Ms. Gregory stated that appellant related that she had informed her supervisor of the incident but refused to file an accident report. Ms. Gregory indicated that later in the conversation appellant described her injury as occurring when she "bent over to put a tub or tray on the carrier ledge." Further, in an undated form report, Dr. Robert I. Saltzman, a Board-certified orthopedic surgeon and appellant's attending physician, listed the date of injury as October 17, 1995 and checked "no" in response to the question regarding whether the condition was caused or aggravated by employment. In an affidavit dated January 22, 1998, Dr. Saltzman stated that appellant "related to me that she was injured at work with the [employing establishment] in December 1995" and stated that the date of injury on the form should be December 25, 1995 rather than October 17, 1995. He, however, again listed an inaccurate date of injury, that of December 25, 1995 instead of December 18, 1995.

Nevertheless, as noted above, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[10] The Board notes that appellant has presented a consistent history of injury since filing her traumatic injury claim. In a statement dated March 23, 1996, she related that her injury occurred in mid-December 1995 while she tried to pull one tray out from two stacked trays. Appellant related, "In order to take one off the top I had to pull them out. I pulled them too close to the edge and both started to fall. I got both of them and felt my left hip pull and start to pain." She again described the occurrence of her injury in a statement to the Office dated April 23, 1996 and at the hearing held on June 26, 1997. Appellant explained that she "did not seek medical attention immediately, [b]ecause I thought it was a pulled muscle and would get better with home treatment and time." Therefore, while the record contains some conflicting evidence regarding the occurrence of the incident, it is not sufficiently strong or persuasive to refute appellant's account of the incident.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such causal relationship.[11]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative

[10] *Id.*

[11] *John M. Tornello*, 35 ECAB 234 (1983).

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[12]

In office visit notes dated February 1996, Dr. Saltzman diagnosed a herniated disc. However, he did not relate the diagnosed condition to the December 18, 1995 employment incident and thus these office visit notes are insufficient to meet appellant's burden of proof.[13]

In a form report dated March 6, 1996, Dr. Saltzman diagnosed L-5 radiculitis on the left side and found that appellant could work with restrictions. He checked "yes" that the history of injury provided by appellant corresponded to the history provided on the form of appellant experiencing left hip and leg pain after lifting trays of mail. In a form report dated August 8, 1996, Dr. Salztman diagnosed a herniated nucleus pulposus at L4-5 and again checked "yes" that the history of injury provided by appellant corresponded to that on the form. The Board has held that a physician's opinion on causal relationship which consists only of checking "yes" to a form question without supporting rationale has little probative value and is insufficient to support causation.[14] Further, in an undated form report, Dr. Saltzman checked "no" in response to the question regarding whether the diagnosed condition was caused or aggravated by employment.

In an office visit note dated May 29, 1996, Dr. Saltzman diagnosed a disc herniation at L4-5 and found that appellant's "multiple joint complaints on the right S1 joint and anterior shoulder pain bilaterally and equally in the shoulders, suggests a thematoid arthritis process." In an office visit note dated July 22, 1996, Dr. Saltzman noted that a physician had diagnosed appellant with polymalgia rhematica and indicated that appellant "has been on severe limitations since March 6, 1996 for pains in the left leg beginning somewhere in late December 1995 or early January 1996." In these reports, he did not attribute appellant's condition to the December 18, 1995 work incident and thus his opinion is not sufficient to meet her burden of proof.

In a report dated December 10, 1996, Dr. Todd M. Chapman, a Board-certified orthopedic surgeon, noted that appellant experienced pain from her left buttock down her left leg after lifting trays of mail in December 1995. He recommended further objective tests prior to determining whether she required surgery. In an office visit note dated January 3, 1997, Dr. Chapman found that a computerized tomography scan revealed facet arthropathy at L3-4 but no "definite herniation at this L4-5 level." In an office visit note dated January 24, 1997, he related that appellant could not work as a rural letter carrier due to the heavy lifting required. In his reports, however, Dr. Chapman did not address the cause of appellant's condition and disability and thus his opinion does not support her claim.

In an affidavit dated January 22, 1998, Dr. Saltzman related that he began treating appellant in February 1996 at which time she informed him that she had injured herself at work

[12] *James Mack*, 43 ECAB 321 (1991).

[13] *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[14] *Ruth S. Johnson*, 46 ECAB 237 (1994).

in December 1995. He stated that appellant told him in February 1996 that she had experienced radiating pain down her left leg for approximately two months and he noted that a magnetic resonance imaging scan showed an L4-5 disc herniation. Dr. Saltzman indicated that the date of injury on a previously submitted form report should read December 25, 1995 rather than October 17, 1995 and further related that beginning March 6, 1996 appellant had "severe limitations" due to left leg pain. His report is insufficient to meet appellant's burden of proof as he did not indicate knowledge of the circumstances of the December 18, 1995 injury, provide an accurate date of injury, or reach a specific finding, supported by medical rationale, regarding the cause of her diagnosed condition of a herniated disc and resulting limitations.[15]

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.[16] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and her medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof.

The decisions of the Office of Workers' Compensation Programs dated May 6, 1998, November 26 and September 9, 1997 are hereby affirmed as modified to reflect that appellant has established that the December 18, 1995 employment incident occurred as alleged.

Dated, Washington, D.C.
April 6, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[15] *See Joseph M. Popp*, 48 ECAB 624 (1997) (medical opinion must be based on a complete and accurate factual and medical history).

[16] *Donald W. Long*, 41 ECAB 142 (1989).